

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE CENTER FOR INVESTIGATIVE
REPORTING, INC.,

Plaintiff,

v.

OPENAI, INC., OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC,
OPENAI GLOBAL LLC, OAI
CORPORATION, LLC, OPENAI
HOLDINGS, LLC, and MICROSOFT
CORPORATION,

Defendants.

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC, OPENAI
GLOBAL LLC, OAI CORPORATION, LLC,
OPENAI HOLDINGS, LLC,

Defendants.

DAILY NEWS, LP; CHICAGO TRIBUNE
COMPANY, LLC; ORLANDO SENTINEL
COMMUNICATIONS COMPANY, LLC;
SUN-SENTINEL COMPANY, LLC; SAN
JOSE MERCURY-NEWS, LLC; DP MEDIA
NETWORK, LLC; ORB PUBLISHING, LLC;
AND NORTHWEST PUBLICATIONS, LLC,

Plaintiffs,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC, OPENAI
GLOBAL LLC, OAI CORPORATION, LLC,
OPENAI HOLDINGS, LLC,

Defendants.

Civil Action No. 1:24-cv-04872-UA

Hon. Sidney H. Stein

(Hon. Ona T. Wang)

ORAL ARGUMENT REQUESTED

Civil Action No. 1:23-cv-11195-SHS
(consolidated)

Hon. Sidney H. Stein

(Hon. Ona T. Wang)

ORAL ARGUMENT REQUESTED

Civil Action No. 1:24-cv-03285-SHS
(consolidated)

Hon. Sidney H. Stein

(Hon. Ona T. Wang)

ORAL ARGUMENT REQUESTED

**DECLARATION OF PAVEN MALHOTRA IN SUPPORT OF DEFENDANT OPENAI'S
AND DEFENDANT MICROSOFT'S JOINT MOTION TO CONSOLIDATE**

I, Paven Malhotra, declare as follows:

1. I am a partner with the law firm of Kecker, Van Nest and Peters LLP, counsel of record for Defendants OpenAI, Inc., OpenAI GP, LLC, OpenAI, LLC, OpenAI, LLC, OpenAI OpCo LLC, OpenAI Global LLC, OAI Corporation, LLC, and OpenAI Holdings, LLC (collectively, “OpenAI”), and am admitted to practice before this Court.

2. I have knowledge of the facts set forth in this declaration and, if called to testify as a witness thereto, could do so competently under oath.

3. On October 1, 2024, counsel for OpenAI, Microsoft Corporation, and The Center for Investigative Reporting, Inc. (“CIR”) met and conferred pursuant to Rule 26(f). The parties agreed that fact discovery opened that same day. CIR indicated that it opposed consolidation with the already consolidated *New York Times* and *Daily News* cases given its concerns that the discovery schedule in those consolidated cases would not afford CIR adequate time to participate in discovery.

4. On October 2, 2024, I emailed counsel for CIR to address CIR’s concerns explaining that OpenAI and Microsoft are willing to cross produce documents already produced in the *New York Times* and *Daily News* cases to CIR once a protective order and ESI order are entered in this case. I also explained that OpenAI and Microsoft Corporation (collectively “Defendants”) would identify for CIR the custodians whose documents have been searched to date as well as the search terms that were used for the productions. In an email on October 3, 2024, counsel for CIR responded indicating that it opposes consolidation because Defendants’ proposal “does not resolve the concerns [CIR’s counsel] raised given that fact discovery is scheduled to close in the consolidated cases in less than three months.” A true and correct copy of the email thread (without attachments) containing the aforementioned email correspondence is attached hereto as **Exhibit 1**.

5. Open AI is defending multiple consolidated class action copyright infringement lawsuits filed in the U.S. District Court for the Southern District of New York and the U.S. District court for the Northern District of California. *See Authors Guild v. OpenAI Inc.*, Case No. 1:23-cv-

8292-SHS (S.D.N.Y.); *In re OpenAI ChatGPT Litig.*, Case No. 3:23-cv-03223-AMO (N.D. Cal.).

6. On May 24, 2024, the Northern District of California ordered “all counsel in the OpenAI cases” to “meet and confer further such as to explore every avenue through which the discovery process (and depositions in particular) in these cases may be streamlined and made efficient. . . . Plaintiffs would be well advised to cooperate with Defendants in the process of streamlining discovery coordination and deposition procedures across the OpenAI cases given that the court is sympathetic to Defendants’ concerns about duplicative depositions on the same topics constituting an avoidable burden and a waste of resources.” *In re OpenAI ChatGPT Litig.*, Case No. 3:23-cv-03223-AMO, ECF No. 144 at 3–4 (N.D. Cal. May 24, 2024). A true and correct copy of the Northern District of California’s May 24, 2024 order is attached hereto as **Exhibit 2**.

7. On October 2, 2024, I emailed counsel for the *New York Times* and *Daily News* to inquire about their position regarding consolidation of the CIR case. A true and correct copy of this correspondence is attached hereto as **Exhibit 3**. I have not yet heard back from counsel.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 4, 2024

/s/ Paven Malhotra
PAVEN MALHOTRA